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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,462	02/23/2004	Humberto A. Berra	GLM-1042	8228

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EXAMINER

PELLEGRINO, BRIAN E

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,462

Applicant(s)

BERRA ET AL.

Examiner

Brian E. Pellegrino

Art Unit

3738

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-109 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10-21, 24-29, 40-60, 65-67, 70-72, 75-77, 80-82, 85-87, 90-92 and 95-97 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/23/04 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/23/04, 3/29/04, 7/12/04, 9/1/05, 5/10/05, 9/29/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election of Specie I in the reply filed on 9/21/05 is acknowledged. After further review it was determined that Specie III can be grouped with specie I and since the Applicant failed to point out any other errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Claims 30-39, 61-64, 68, 69, 73, 74, 78, 79, 83, 84, 88, 89, 93, 94, 98-109 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected specie, there being no allowable generic or linking claim. Claims 7-9, 22, 23 are also withdrawn since it is not seen how the elected embodiment has support member ends connected to the stents.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the support member connected to the graft without touching the stents or touching one of the stents must be shown or the feature(s) canceled from the claim(s). It is noted that Applicant mentioned these in the disclosure, but failed to indicate what figures illustrate these limitations. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended

Art Unit: 3738

replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,2,5,6,10,11,14,15-17,20,21,24-29,40-42,44-47,49,51,55,57,59,65-67,70-72,75-77,85-87,90-92,95-97 are rejected under 35 U.S.C. 102(a,e) as being anticipated by Van Schie et al. (2003/883005). Fig. 2 shows a stent graft having a plurality of stents with the middle stents being considered as inner stents and a tubular graft body surrounding the stents. It can also be seen there is a curved longitudinal support member **8** connected to the graft independent of the stents and has rounded ends **9,10**. Van Schie et al. disclose the support member is a polymer or metal and is preset, paragraph 45. The support member is substantially symmetrical with respect to a centerline that is about the middle of the device going around the circumference. It can be construed that the rounded ends are curved extremities.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6,10-21,24-29,40-60,65-67,70-72,75-77,80-82,85-87,90-92,95-97 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (6099558) in view of Jayaraman (6464719). White et al. disclose a stent graft (Fig. 3) with a plurality of stents **17** and a tubular graft body **16**. It can also be seen that the stent graft has a distal most stent **17a** with at least one more apex than another of the stents. However, White et al. fail to disclose a longitudinal support member. Jayaraman teaches (Fig. 8) a

Art Unit: 3738

longitudinal support member 53 that is curved and shorter than the body of the stent graft. Jayaraman also teaches (Fig. 7) that the support members have looped ends **55**. Jayaraman additionally teaches that the longitudinal members have what can be construed as a partial helix shape or S-shape and used in expansion and made of nitinol, col. 2, lines 3,4,37,38. It would have been obvious to one of ordinary skill in the art to use curved longitudinal support members as taught by Jayaraman in the stent graft of White et al. such that it provides more support to the vessel walls and assist in expansion. Regarding the limitations that the support is symmetrical to the centerline of the graft, it is being interpreted that the middle of the graft is the centerline and thus half of the support is on one side and the other half on the opposite side. The support members can also be said to symmetrical with respect to a centerline through itself.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian E. Pellegrino whose telephone number is 571-272-4756. The examiner can normally be reached on M-Th (6:30am-4pm) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3738

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


BRIAN E. PELLEGRINO
PRIMARY EXAMINER

TC 3700, AU 3738

Continuation of Disposition of Claims: Claims withdrawn from consideration are 7-9,22,23,30-39,61-64,68,69,73,74,78,79,83,84,88,89,93,94,98-109.

BRIAN E. PELLEGRINO
PRIMARY EXAMINER

A handwritten signature in cursive script that reads "Brian E. Pellegrino". The signature is written in black ink and is positioned below the printed name and title.